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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/714,702	11/16/2000	J. Aaron Bly	65678-0037	5353

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EXAMINER

HEWITT II, CALVIN L

ART UNIT	PAPER NUMBER
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3621

DATE MAILED: 10/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/714,702

Applicant(s)

BLY ET AL.

Examiner

Calvin L Hewitt II

Art Unit

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 12.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Status of Claims

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/11/03 has been entered.
2. Claims 1-25 have been examined.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-4, 8-11, 16-18 and 21-24 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Koether, U.S. Patent No. 5,875,430.

As per claims 1-4, 8-11, 16-18 and 21-24, Koether disclose a system for gathering and analyzing data relating to a movable asset comprising:

- a local controller at a first location for acquiring data that is representative of at least one operating characteristic of an asset (figure 2; column 4, lines 23-67; column 5, lines 60-67; column 8, lines 47-56)
- an analysis controller (e.g. remote database) located at a second location that is responsive to the acquired data from the local controller (or local controllers over a plurality of locations) for generating an analysis of the acquired data (column 4, lines 13-36; column/line 4/60-5/36; column 5, lines 50-59; column/line 5/65-6/9; column 6, lines 33-46; column 9, lines 44-67)
- an analysis controller that provides for generating a preventative maintenance determination from said acquired data and at least one historical characteristic (e.g.

maintenance history) relating to said asset (column 9, lines 44-67)

- an electronic communication network for transmitting data from the local controller to the analysis controller (figures 1-3; column 4, lines 12-22; column 5, lines 36-49)
- a handheld device receiving at least a subset of said acquired data stored in the analysis controller (figure 8; column/line 10/1-11/29)
- a handheld device in direct contact with the analysis controller (figure 8; column/line 10/1-11/29)
- a second computer system that receives acquired data, selectively modifies the acquired data and forwards the modified acquired data to the handheld device (figure 8; column 9, lines 10-56; column/line 10/1-11/46)
- an analysis controller with a database including data values, collected data and comparison data; where the comparison represents a best practice level or past historical data to provide a basis for comparison (column/line 10/1-11/46)
- a handheld device that receives parts data in the form of inventory (column 11, lines 6-14 and 35-46)
- an analysis controller that includes a database including data values, collected data and comparison data (e.g. best

practice level and historical data to provide a base point for comparison with collected data) available for a selected data value (column 9, lines 7-60; column 11, lines 24-46)

- user data representing a user accessing the asset, user identification (column 9, lines 10-56; column 10, lines 36-44; column/line 12/27-14/7)
- a second local controller located at a third location for acquiring operating characteristic data (e.g. from the same asset category of a remote asset) (figure 2; column/line 1/57-2/8; column 2, lines 23-37; column 4, lines 13-36; column/line 4/60-5/36)

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5-7 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koether, U.S. Patent No. 5,875,430.

As per claims 5-7, Koether teaches a handheld device that provides data values for entry of foundational data (Specification, page 32, lines 4-7) associated with data values and transmitting the data to the analysis controller (column 11, lines 15-29). Koether also teaches an analysis controller with a database that stores historical data for comparison with collected data (column/line 10/1-11/46). Koether doesn't explicitly recite receiving foundational data prior to acquired data. However, it would have been obvious to one of ordinary skill to collect foundational data prior to acquired data, if there were similar repairs, or installation problems at another location, which can be used to resolve the situation at the current site. The hand-held device of the Koether system contains forms (column/line 10/62-11/8). But, Koether doesn't explicitly recite forms used to collect foundational data. Nonetheless, forms are a well known processing tool used for presenting and/or receiving data in a structured manner. Therefore, it would have been obvious to one of ordinary skill to utilize forms for querying the maintenance database (column 11, lines 24-29).

As per claim 25, Koether et al. specifically recite the system collecting data such as last repair date, cooking profiles, ...etc. Therefore, as Koether et al.. However, the specific data identified by Koether et al. (column 9, lines 10-45) is not necessary and sufficient for implementing their system as Koether et al. explicitly recite "may include" referring to the

type of data being collected. Therefore, it would have been obvious to one of ordinary skill to collect whatever data necessary in order to provide the an accurate analysis of the monitored appliances.

The type of data being collected by the system is non-functional as it does not alter how the machine functions (i.e. the system is monitored whether or not the data comprises the date on which maintenance was performed or not). And, it has been held that nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious (*In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983)).

7. Claims 12-15, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koether, U.S. Patent No. 5,875,430 in view of Heagle et al. U.S. 5,900,801 and Mabuchi et al., U.S. Patent No. 6,417,760.

As per claims 12-15, 19 and 20, Koether teaches a system for maintaining food service facility (abstract; figure 3). However, Koether does not explicitly recite user training. Heagle et al. teach a system for monitoring conditions at a food service establishment, utilizing a local or analysis controller (figure 1) comprising: user identification and access authorization that includes an analysis of user training (column 6, lines 38-62; column 7, lines 36-48; column/line 7/59-8/67; column 9, lines 23-26;

column/line 11/63-12/2; column 12, lines 39-67; column 14, lines 20-22; column 16, lines 11-39). However, neither Heagle et al. nor Koether explicitly recite receiving user ID data, transmitting the ID data to a remote database to derive access to equipment. Mabuchi et al. teach a maintenance and inspection system that maintains worker files, including identification, authorization and certification data, in order to determine whether a worker is allowed to operate equipment (figures 6, 8, 19, 23-26, and 40; column, 18, lines 1-6; column 21, lines 20-53; column 30, lines 47-64; column 33, lines 14-39; column 38, lines 33-46) Therefore, it would have been obvious to one of ordinary skill to combine the systems of Koether, Heagle et al., and Mabuchi et al. in order to maintain a clean and efficiently operating environment where food is prepared and/or distributed, through the implementation of employee specific requirements for ensuring adherence to operational standards, such as HACCP guidelines ('801, column 8, lines 30-67; column/line 12/24-13/20; column 16, lines 11-40).

Conclusion

8. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Calvin Loyd

Art Unit: 3621

Hewitt II whose telephone number is (703) 308-8057. The Examiner can normally be reached on Monday-Friday from 8:30 AM-5:00 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, James P. Trammell, can be reached at (703) 305-9768.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
c/o Technology Center 2100
Washington, D.C. 20231

or faxed to:

(703) 305-7687 (for formal communications intended for entry and after-final communications),

or:

(703) 746-5532 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

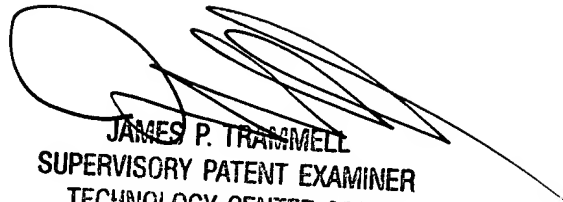
Hand-delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, 7th Floor Receptionist.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113.

Art Unit: 3621

Calvin Loyd Hewitt II

October 14, 2003



JAMES P. TRAMMELL
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600